



Department
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Ministry
of Justice

The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers

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The Association of Directors of Children Services (ADCS) supports the content of this document and considers it to be a good practice model, offered by way of assistance, and therefore urges all local authorities to adopt the practices described within the document to achieve better outcomes for children and young people.

Ministerial foreword



I, and this government, are deeply committed to supporting our most vulnerable children to have the best possible outcomes and life chances. Where the state has undertaken to look after a child, we have a particularly profound responsibility to protect, support and advocate for them just as any family would.

Whilst the vast majority of looked-after children do not get into trouble, for a small number, contact with the criminal justice system can make it that bit harder to achieve positive outcomes. Whilst never taking away from the need to take responsibility for actions and their consequences, the right approach in responding to challenging behaviour or during contact with criminal justice agencies can help avoid unnecessarily criminalising looked-after children and care leavers, and promote better outcomes for them and society.

I am, therefore, very pleased to be able to publish this national protocol to provide a framework to help local areas reduce criminalisation of looked-after children and care leavers. This has been co-developed with a wide range of stakeholders and I would like to thank them for their help and support. Achieving the best outcomes for children in care and care leavers can only be achieved by strong multi-agency working at a local and national level. The development of this protocol by leaders in the statutory and voluntary sectors, from across children's social care, justice, police and health, illustrates the importance that we, collectively, place on helping vulnerable children and young people achieve their full potential.

A handwritten signature in black ink, appearing to read 'N. Zahawi'.

Nadhim Zahawi MP

Parliamentary Under Secretary of State for Children and Families

1. Introduction

- 1.1. This national protocol is aimed at local authority children's services, local care providers (fostering services, children's homes and other arrangements), police forces, Youth Offending Teams (YOTs), the Crown Prosecution Service (CPS) and HM Courts and Tribunal Service (HMCTS), local Youth Panel (Magistrates), and local health services including mental health. Its key purpose is to encourage and provide the framework for these agencies to co-develop local arrangements to reduce the unnecessary criminalisation of looked-after children and care leavers.
- 1.2. Where a child is looked after by the state, we have a responsibility to safeguard and promote their welfare and to act as good corporate parents so they can each reach their full potential. The United Nations Convention on the Rights of The Child includes preventing criminalisation of children and highlights the importance of this in protecting children. This is particularly true for children and young people with additional vulnerabilities such as looked-after children and care leavers. Ultimately the question we must ask is: *'would this be good enough for my child?'*
- 1.3. Although a criminal justice response will remain appropriate in a small number of cases, this framework is designed to prevent, unnecessarily, criminalising already highly vulnerable children and young people where possible. It sets out best practice for avoiding the criminalisation of looked-after children and care leavers up to the age of 25, and we encourage all areas to implement this as soon as possible.

The challenge

- 1.4. We have made significant strides in reducing the criminalisation of children and young people. In the last decade, the number of young people as first-time entrants to the youth justice system has dropped by 85%.¹ This is a credit to the agencies and practitioners involved. However, although the vast majority of looked-after children and care leavers do not get involved with the justice system, they remain over-represented compared with others in the criminal justice system².

¹ [Youth Justice Annual Statistics 2016-17](#) (see Supplementary Tables, Chapter 2, Table 2.1)

² In the year to 31 March 2018, 4% of LAC aged 10 or over looked after for at least 12 months were convicted or subject to youth cautions or youth conditional cautions during the year. Looked after children (who have been looked after for at least 12 months) are five times more likely to offend than all children. ([Children-looked-after-in-england-including-adoption-2017-to-2018](#)).

- 1.5. Coming into contact with the criminal justice system tends to increase the likelihood of offending, and children and young people, especially the most vulnerable, such as looked after children, should be diverted from it wherever possible.
- 1.6. This is a challenge we must meet. First, we must recognise that the vast majority of looked-after children enter care due to abuse and neglect, and the impact of trauma and abuse, or additional vulnerabilities³, on emotional and behavioural development. This can result in behaviour perceived as challenging and should inform responses to such behaviours. Secondly, we must ensure our response to incidents does not initiate or exacerbate negative behaviour and contribute to unnecessary police involvement or criminalisation.
- 1.7. Additionally, in light of the David Lammy MP and Charlie Taylor reviews⁴, we should be aware of, and respond to, the additional vulnerabilities of Black Asian and Minority Ethnic looked-after children, who find themselves over-represented in both the care and youth justice systems.
- 1.8. We must meet the challenge of balancing the rights and needs of highly vulnerable children and young people and those of their carers and/or the public in deciding how to respond to incidents, and whether a formal criminal justice response is appropriate.
- 1.9. This national protocol is a practical response to these challenges. It draws on recommendations in the Narey⁵ (residential care), Laming⁶ and Taylor reviews and good practice across the country. In Surrey, the South East protocol has helped reinforce a holistic approach to incidents from criminal justice and children's social care agencies. This has resulted in a 92% decrease in first time entrants to the youth justice system (1,499 first-time entrants to youth justice system in 2007/8 compared with 113 in 2017/18) and an 18% drop in reoffending between 2007/08 and 2017/18. The national protocol is designed to reinforce and extend such practice, and encourage a culture of continuous improvement. **We are seeking to minimise the risk of criminalising looked-after children and care leavers in order to improve their life chances.**
- 1.10. The protocol is a framework for best practice for those working with looked-after children, **in all types of placement**, and care leavers up to age 25. It aims to:

³ For example, Autism or communication difficulties

⁴ [The Lammy Review \(sept 2017\)](#) and [Taylor review-of-the-youth-justice-system \(Dec 2016\)](#)

⁵ [Sir Martin Narey's independent review of children's residential care in England \(2016\)](#)

⁶ [In care and out of trouble - An independent review chaired by Lord Laming \(2016\)](#)

- Avoid the prosecution of looked-after children and care leavers wherever possible and appropriate, by encouraging a response to incidents which reduces the likelihood of criminalisation, offending or reoffending through promoting:
 - an understanding of trauma and attachment and their impact on neuro-development and behaviour amongst all key professionals;
 - an understanding of where children (UK as well as foreign nationals) may have been coerced and subsequently criminally exploited (for example, through running county lines or in cannabis cultivation);
 - the use of positive parenting whilst in care;
 - learning from incidents;
 - listening to children and young people's voice/views and using this to inform practice;
 - the development of strong understanding of local data and circumstances;
 - use of restorative approaches; and
 - an attitude where all professionals ask themselves '*would such behaviour lead to an arrest if the child had been living with their family?*'
- Encourage local authorities and children's services trusts to implement the protocol between care providers (fostering services, children's homes and all other arrangements), police forces, Youth Offending Teams (YOTs), the Crown Prosecution Service (CPS) and HM Courts and Tribunal Service (HMCTS), local Youth Panel (Magistrates), health services, and other authorities in the area⁷, or where they place children, so agencies respond consistently and share necessary information when incidents occur.
- Encourage local authorities to include or refer to this protocol in their 'local offer' to care leavers.
- Encourage health commissioned services to provide enhanced high quality mental health assessments and support to looked after children and young

⁷ This list is not exhaustive and other agencies or partners can and should be included where helpful in preventing and reducing unnecessary criminalisation of looked-after children and care leavers.

people as a basis to all-health planning, given that research shows that they have a higher level of such needs than the general population.

- Provide the key principles and core for the development of arrangements that ensure that looked-after children and care leavers get the same protection from criminalisation regardless of where they live or the type of placement they are living in (implementation should be underpinned by strong interrogation and use of all available data, contributing to the area's joint strategic needs assessment).
- Ensure a degree of consistency across the country by offering a common reference and core for all areas' arrangements.

1.11. The national protocol is a recommended framework and common core to use in the implementation of arrangements for reducing the unnecessary criminalisation of looked-after children and care leavers⁸.

1.12. Implementation of the protocol will benefit children and young people, local agencies and health services. It helps children and young people maintain relationships and placement stability. It will help children's social care to implement the corporate parenting principles, coordinate services to promote positive outcomes for looked-after children and care leavers, and reduce their unnecessary criminalisation. For criminal justice agencies, it will help reduce the burden of first time entrants into the criminal justice system and reoffending.

⁸ Where local arrangements or protocols already exist, this protocol should provide opportunity to review and refresh these arrangements.

2. Overarching key principles

2.1. As a society, we have a responsibility to ensure we protect the children we care for from unnecessary criminalisation and to ask '**would this be good enough for my child?**' As corporate parents, local authorities must, under the Children and Social Work Act 2017, have regard to seven corporate parenting principles, including '*to promote high aspirations, and seek to secure best outcomes*' for the young people they look after, and ensure that relevant partners understand how they can assist local authorities apply the principles in relation to the services those partners may provide.

2.2. A strong corporate parenting ethos recognises the care system is not just about keeping children safe, but also about promoting recovery, resilience and wellbeing. This requires corporate parents to ensure that work across social care, placement providers, educational settings, health services, the police and other criminal justice partners, prevents unnecessary criminalisation. Local arrangements will provide a set of commitments on behalf of partner agencies. They should be based on the following principles:

- Every effort should be made to avoid unnecessary criminalisation of looked-after children and care leavers, **including through prevention activity**. This is in recognition of the fact that looked-after children's experiences can contribute to behaviours that make them particularly vulnerable to involvement in the youth justice system, potentially affecting their future life prospects. A co-developed, whole system approach should be encouraged. This should include prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do offend.
- Listening to and learning from children and young people.
- All professionals working with looked-after children and care leavers should understand the impact of trauma and abuse on development, particularly their effect on emotional and behavioural development and self-regulation. Professionals, including YOT workers, social workers, teachers, children's home staff and foster parents, health services, police, CPS, HMCTS and local Youth Panel (Magistrates), at both senior and frontline levels, should receive appropriate training in this regard.
- All local agencies should contribute to the understanding of local and national factors that can increase children and young people's risk of being criminalised (such as going missing from school or their care placement and cross-area criminal activity focused on vulnerable children, such as county lines). They should use this to inform their practice and local implementation of the protocol, and to target prevention efforts effectively.

- All agencies should understand the specific needs of children and young people (both UK and foreign nationals) who have been trafficked or are victims of modern slavery. They should be able to identify where they may have been coerced into undertaking or becoming involved in criminal activity by their traffickers. This includes being aware of the non-prosecution principle in Section 45 of Modern Slavery Act 2015.
- Victims and communities have a right to be protected from offending and to have their needs and interests taken into account in decisions on resolutions to offending.
- Restorative and diversionary⁹ approaches should underpin responses, whether the behaviour occurs in a child's placement or the wider community (see section on [A restorative approach](#) and [Annex 2 Restorative Approaches](#)).
- Many of the causes of youth offending lie beyond the reach of the youth justice system. All professionals should pursue a child-centred approach based on a broad range of agencies providing an integrated, co-ordinated and pro-active response to preventing and addressing challenging or offending behaviour.
- Children and young people already within the youth and criminal justice systems need protection from escalation and these principles apply equally to them. Persistent and more serious offending can indicate that the young person has significant unmet needs and responses to offending should recognise this.
- Children and young people on remand or custodial sentence are often highly vulnerable with multiple over-lapping risks and needs. They require careful multi-agency oversight and support, including from youth offending teams, Children's Services, health services and custodial facilities.
- Planning for the through-care and resettlement of young people on remand or serving a custodial sentence should start from their entering their remand placement, or custodial establishment, and involve all relevant professionals in their lives. Particular attention should be given to the early identification and provision of suitable post-custody accommodation and education, training and skills opportunities or employment options. Additionally, for those unable to access employment, education or training in the short-term, comprehensive benefit advice and support should be offered to help avoid any drift back to crime as a source of 'income'.

⁹ Specific approaches that have been developed as alternatives to prosecution after an offence has been detected.

- All professionals, including social workers, teachers, police officers, foster parents, children's home staff and YOT workers, have a duty to ensure that any special educational needs (including communication and interaction, cognition and learning and social, emotional and mental health difficulties¹⁰) presented by looked-after children or those harmed by an incident are identified, acknowledged and addressed in the management of the response to the behaviour.
- Health services have a duty to give parity of esteem to the mental health needs as to the physical health of children and young people and to assist partner agencies to understand how children can best be supported to divert them from criminal behaviour.

2.3. The majority of children enter care due to abuse or neglect¹¹, and many experience multiple placement moves¹². Although planned moves can have positive effects and be in the best interests of the child, placement moves can also have negative impact on children. The damage of pre-care experiences and placement moves can contribute to an increasingly negative cycle, where placement moves lead to worsening behaviour as a communication of unmet needs which becomes hard for the young person to break. Responses to looked-after children and care leavers who show behaviour which can be experienced as challenging should be mindful of this and seek to avoid contributing to this cycle. As such:

- Local authorities need to work with the placement provider, carers, and the child to ensure placement stability and responsive care. This needs to be underpinned by high-quality up-to-date needs assessment, care planning and holistic support. Restorative approaches and other positive preventative approaches can help to prevent placements from breaking down or provide learning from incidents to reduce the risk of future placement breakdowns.
- Corporate parenting boards¹³ should ensure that systems are in place to identify all looked-after children they are responsible for who come into contact with the criminal justice system, whether placed within or outside the home authority, to build an accurate picture of their offending, challenging behaviour and any exploitation risks that they face. This should be used to support children and young people to reduce the risk of further criminalisation.

¹⁰ See [SEND-code-of-practice-0-to-25](#)

¹¹ 61% of children starting to be looked after in the year to 31st March 2018 were identified as having a primary need of abuse or neglect. ([Children-looked-after-in-england-including-adoption-2017-to-2018](#)).

¹² Of children looked after at 31 March 2018, 32% had two or more placements during the year ([Children-looked-after-in-england-including-adoption-2017-to-2018](#))

¹³ Corporate parenting boards or panels look strategically at the way in which their looked-after children and care leavers experience services.

3. The voice of the child

3.1. Article 12 of the United Nations Convention on the Rights of the Child states that the child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child. Article 13 provides the child with the right to express his or her views, get information and share their ideas. The requirement for looked-after children's wishes and feelings to be taken into account is enshrined in Section 22 of the Children Act 1989. Encouraging children and young people to express their views, wishes and feelings and taking these into account, is also a key part of the corporate parenting principles to which local authorities must have regard to when exercising their functions in relation to looked after children. Listening to, learning from, and acting on children and young peoples' voice is vital to having effective policies and practice to avoid criminalising children and young people. This should be underpinned by:

- Seeking looked-after children and care leavers' input into the implementation of local arrangements for delivering this protocol.
- Asking for the child or young person's view of what has happened when responding to an incident. This is an opportunity to understand the child or young person's perspective - both to inform decision making about how to respond in their best interests and to avoid criminalisation where possible. Agencies should approach these conversations with an open mind and be open to the possibility that fault might not lie at all, or in its entirety, with the child or young person.
- Seeking children and young peoples' views after an incident, particularly where they have come into contact with criminal justice agencies, and feeding this into agencies' policies, practice, their staff learning and approach to behaviour management to help prevent future incidents.
- Providing advice, information and support to secure the support of an advocate.¹⁴
- The views of looked-after children and care leavers should be sought when commissioning health services, including accessing support services for both physical and mental health needs.

¹⁴ Further information on advocacy for is available in [Providing Effective Advocacy Services for Children and Young People Making a Complaint Under the Children Act 1989](#) and [The Independent Reviewing Officers Handbook](#).

- 3.2. In addition to the above, a key part of listening to a child's voice where they come into contact with the criminal justice system is ensuring that they understand their rights to legal representation and are supported to access this where needed. If a child is arrested, they have the right to free legal advice or they can choose to be represented by their own solicitor. This must be explained to them at the police station.
- 3.3. Children under 17 (and vulnerable adults) must also have an 'appropriate adult' present during questioning. This may be a parent or guardian but it could also be a social worker, volunteer or a friend or family member aged 18 or over. However, this individual must not be involved in the matter.
- 3.4. If a child is charged with an offence they have the right to be legally represented (Article 6, European Convention on Human Rights). If a child does not have the means to pay for the legal assistance then, in most circumstances, they have the right to legal aid.

4. Unaccompanied asylum-seeking and migrant children

4.1. Unaccompanied asylum-seeking and migrant children who are looked after are especially vulnerable should they go missing from their care placement. Not only are they at risk of being exploited or mistreated, they are also often at heightened risk of being coerced into crime, including being radicalised. The Government has published separate statutory guidance that is underpinned by a safeguarding strategy to support local authorities and their partners in the care of this cohort of vulnerable looked-after children.¹⁵ This must be carefully considered and used to inform development of local arrangements.

¹⁵ [Strategy setting out the government's commitments to safeguard and promote the welfare of unaccompanied asylum seeking and refugee children](#) and [Statutory guidance on care of unaccompanied migrant children and child victims of modern slavery](#)

5. Supporting the further development of effective inter-agency relationships and information sharing regarding preventing criminalisation

5.1. Effective information sharing and communication is vital to ensuring looked-after children and care leavers receive the right support to avoid criminalisation and to assist appropriate decision-making where they do come into contact with criminal justice agencies. This is regardless of the location, type of placement or whether they are placed inside or outside their responsible authority, and is underpinned by the following principles:

- Local authority children's services, carers, police, schools, local health services (including mental health services) and independent child trafficking advocates (ICTAs)¹⁶ should build positive relationships and communicate with each other to help resolve any problems where they arise.
- Agencies (local authorities, police, care settings, health services, education settings and criminal justice agencies) develop a joint protocol on reducing unnecessary criminalisation of looked-after children and care leavers. This should ensure a shared understanding among all agencies of the vulnerabilities of looked-after children and care leavers as a cohort, effective prevention activity and that the responsible (or formerly responsible) authority and carers are informed if looked-after children or care leavers come into contact with the police/criminal justice agencies.
- Agencies develop an environment of information sharing which demonstrates to young people that they (the agencies) are working together and sharing information to serve the young person's best interest. Where there is a lawful basis for sharing information, the Data Protection Act (2018) and the General Data Protection Regulation (as applied by the Data Protection Act 2018), allow practitioners to process relevant personal information about a child to keep them safe from harm or to protect their physical, mental and emotional wellbeing.
- All local authorities should have reciprocal arrangements in place to ensure looked-after children placed outside of their responsible authorities have the same protection from offending behaviour and criminalisation as looked-after children placed inside their responsible authority's area. If not, this tool should assist in developing such arrangements.

¹⁶ Independent Child Trafficking Advocates were implemented in Greater Manchester, Hampshire and the Isle of Wight and nationally in Wales from January 2017.

- Agencies should consider and outline how, within the existing legal framework, they will ensure necessary and relevant information is shared with children and young people's solicitors/ legal representatives.

5.2. To be clear, this does not mean that all information contained in every child's care plan needs to be shared with all agencies. The aim of the above principles is to set clear expectations of professionals to use their judgement to share the **appropriate** information needed to safeguard looked-after children and care leavers and ensure relevant agencies know they are vulnerable so they can respond appropriately and help avoid criminalising them unnecessarily. This should be done within the existing legal framework, particularly the Data Protection Act 2018 and the General Data Protection Regulation. To support this, we strongly urge seeking legal advice when beginning local implementation of the protocol and when necessary thereafter.

6. Responding to incidents

6.1. Carers need to consider the nature and seriousness of the incident before deciding how to respond and whether to involve the police.

6.2. It is good practice to have rigorous assessments and plans in place for the response to individual children and young people's behaviour. Effective de-escalation requires practitioners to make rapid and structured assessments of the immediate and foreseeable risks, taking into account the care planning, risk assessment and positive behaviour support/safe handling planning for that individual child or young person, including:

- when to decide not to make an intervention - when you can restore safety in another practicable way; and
- when to decide on an intervention – when you consider there are not enough adults to physically intervene safely, or when you consider it clearly unsafe, for example, the young person has a weapon.

6.3. 'Dynamic risk assessment' is an essential tool to help practitioners assess how existing plans apply to the present situation, and structure decision making for their actions and their recording. Further information on dynamic risk assessment is available in [Annex 3](#).

6.4. The following considerations should underpin the response to an incident:

- Always working to defuse and/or de-escalate as a first response.
- Understanding the emerging incident from the perspective of a child or young person's experience. Was there a trigger or underlying stressor contributing (e.g. something surrounding family contact or Christmas approaching)?
- Nature and seriousness of the allegation/or incident including any action against a victim.
- Wishes and best interest of the victim.
- Previous incidents of a similar nature by the same child or young person.
- Previous relationship between victim and perpetrator.
- Previous behaviour or offending and any bullying/peer pressure/duress.
- Whether the child or young person is (or there is reason to believe they may be) a victim of criminal exploitation, having been coerced to undertake the criminal activity, including by traffickers.

- Provision of mental health services prior to the incident and if there has been good engagement from the child or young person.
- Probability of a repeat incident.
- Level/value of damage caused.
- Lead-up to the incident including whether there may have been provocation.
- With the consent of the victim, can alternative courses, such as restorative approaches, be appropriately used?
- Would I have called the police if this were my own child?

6.5. The police should not be used for low-level behaviour management or matters a reasonable parent would not have called the police over. Any incident reported to the police, which amounts to a crime, will be recorded. Understanding the potential for a child or young person having their details retained on police databases, which remain searchable and potentially discloseable into adulthood, should allow those caring for looked-after children to make an informed judgement about involving the police. It is important for all agencies and those caring for looked-after children to be clear about how they will decide how to respond to an incident. A model framework for doing this is included in [Annex 4](#).

Police involvement in decision-making

6.6. Police decision-making when responding to incidents involving looked-after children should be underpinned by the following principles:

- An expectation that local authority officers, residential care workers or foster parents will demonstrably support looked-after children in a way that meets the child's needs and minimises the risk of incidents arising. When incidents do arise, carers should strive to manage them at the placement through internal resolution without police involvement wherever possible and appropriate.
- Where this is not possible due to the severity of the situation, or where there is concern about immediate safety, police should consider use of discretionary powers to apply an informal resolution response (such as community resolution). Where the police are required to record an incident as a crime but feel further action (other than safeguarding) is not in the public interest they

have the discretion to resolve the report accordingly by applying Outcome 21 from the National Police Outcomes Framework.¹⁷

- Children and young people should not be taken to police stations on matters that are unlikely to lead to charges. However, where this is necessary, they should be adequately supported by their responsible local authority or care setting. Police, social workers, and carers should also consider what will happen when the child is discharged from the station.
- In circumstances where informal community resolution is inappropriate, the police should, as a matter of routine, consider diversion from criminalisation/prosecution through discussion in local joint decision-making panels¹⁸. The panel should consider if using a more substantial restorative intervention, potentially involving other agencies, is suitable. It should take into account the wishes of those harmed as well as seeking to address the needs of the young person who offends to reduce the risk of repeat offending. It is good practice for such procedures to include a cooling-off period and sufficient time for decisions to be informed by the advice of key professionals (e.g. registered manager and key worker, foster parents, social worker or police link workers for residential settings).
- Where the child or young person does not admit to an offence, or where the offence is serious enough to merit considering prosecution, individual circumstances and those of the offence should be carefully considered when deciding if charging and prosecution is appropriate.¹⁹ Looked-after children and care leavers can be particularly vulnerable and targeted for criminal exploitation. Any decision to charge and prosecute a young person should take into account whether their actions are due to such exploitation or human trafficking or modern slavery. If they are a victim of trafficking or modern slavery, the non-prosecution principle within the Modern Slavery Act 2015 should be considered and, if appropriate, applied. Furthermore, the local authority should be pro-active in assisting the Crown Prosecution Service in reaching informed decisions when considering cases involving looked-after children.

¹⁷ Outcome 21 in the Police Outcomes Framework provides that, where police consider further investigation to support taking formal action against a named suspect is not in the public interest, the matter can be closed with no further action taken.

¹⁸ Joint Decision-making panels are multi-agency panels designed to consider and provide informed decision-making, based on various child records, on the most suitable case disposal. The panel has regard to the best interests of both children and victims of crime, with a view to protecting potentially vulnerable children and obligation to protect the public.

¹⁹ Although only applying to offences committed in children's homes, the [Crown Prosecution Service Guidance on Youth Offenders](#) section on Behaviour in Children's Homes provides a useful way of looking at aggravating and mitigating factors when deciding whether prosecution of looked-after children is appropriate regardless of the child's type of placement.

- Ensuring children and young people understand their right to legal representation (as set out in [paragraphs 3.2 – 3.4](#)), including where they are voluntarily interviewed in their placement.
- Where a looked-after child comes into contact with the criminal justice system, their responsible authority is contacted and has input in to decision-making.

Health services

6.7. Designated doctors and nurses for looked-after children have a key role in ensuring that local health services fulfil their role in improving the health of looked-after children. Local health services may help to assess risk and provide support after an incident, helping to prevent children and young people from being criminalised by reducing risk of future incidents. Designated doctors and nurses for looked-after children are a key partner in developing local arrangements based on this protocol²⁰.

Looked-after children placed outside the area of their responsible local authority

6.8. Looked-after children may be placed outside the area of their responsible authority; for example, where it is in their best interests due to safeguarding needs or to access specialist services. All professionals should ensure that this does not cause additional barriers to sharing information and communicating across areas or agencies. The principles on effective, focused and relevant information-sharing are vital to ensuring these young people have the same protection against involvement in offending and criminalisation as those placed in their home authority.

- All local authorities should have reciprocal arrangements in place to ensure looked-after children placed out of area have the same protection from offending behaviour and criminalisation as those placed within their responsible authority area.
- Where a young person offends, it will be the duty of those in the area where the offence takes place to consult and discuss ways forward with the child's responsible authority. This can include remitting the case back to the child's home local authority area for decision to ensure that informed decision-making and appropriate action is taken to reduce the risk of repeat offending.

²⁰ Further information on designated doctors and nurses for looked after children is available in [Promoting the health and well-being of looked-after children: Statutory guidance for local authorities, clinical commissioning groups and NHS England](#).

- Home local authorities **must** notify the receiving authority and health services that a child or young person is moving into their area either before the placement is made, or within 5 working days if an emergency placement, as required by [Care Planning, Placement and Case Review \(England\) Regulations 2010](#).²¹

Response to incidents occurring outside of the care placement

6.9. Response to incidents occurring outside of a care placement should be underpinned by the following principles:

- Where an incident involves harm to members of the public, the police (and/or partners) will consult with those involved and explore the potential for it to be resolved through informal resolution wherever possible.
- Decision-making should be referred to joint decision-making panels²² (other than where the young person does not admit responsibility for their actions). The panels should ensure that their decisions are underpinned by information from professionals associated with the child, so that appropriate services and consistent support can be provided to address the unmet needs of those involved, support use of restorative practice and reduce the risk of further offending.

²¹ Regulation 13 of the Care Planning, Placement and Case Review (England) Regulations 2010, as amended, requires the responsible authority to notify the area authority in writing of the arrangements for a Child's placement before the placement is made or, if the placement is made in an emergency, within five working days of the start of the placement unless it is not reasonably practicable to do so.

²² See footnote 16

7. Care leavers up to the age of 25

7.1. Care leavers often remain vulnerable and all agencies should be aware that childhood trauma can continue to affect behaviour and behavioural and emotional development into early adulthood, including poor emotional regulation and impulse control. Care leavers may require carefully planned and well-focused support underpinned by the following principles to both help avoid them offending and support them if they do come into contact with the criminal justice system:

- Local authorities' support to care leavers is underpinned by an appropriate and strong corporate parenting ethos and 'Local Offer'²³. Personal advisors, or other support networks as agreed in the young adult's plan, will be crucial as the focal point to ensure that care leavers are provided with the right kind of personal support²⁴.
- Leaving care services should develop and maintain constructive working relationships with local criminal justice services to help personal advisors, and other partners supporting care leavers, make the right links to support young people, including the use of pathway planning to divert them from offending, support them if in custody, or supervise them in the community on release from custody.
- Local authority policies and guides on leaving care and aftercare services should be developed in consultation with the YOT and the Probation Service.

7.2. Where care leavers do come in to contact with the criminal justice system:

- Local authorities should put in place measures encouraging care leavers aged 18 to 25 to make their care leaver status known if they come into contact with the police or criminal justice agencies. This will allow support services, including their Personal Advisor, to be notified and involved in decision-making and case resolution.
- Where the care leaver consents to their notification, Police and criminal justice agencies should seek and encourage the involvement of the care leaver's

²³ Local authorities are the 'corporate parent' to all care leavers, including those released from custody. The Children and Social Work Act 2017 requires authorities to consult on and publish a 'Local Offer'. This must provide information about the services and support available to care leavers in their local area, including on their statutory entitlements and any discretionary support the local authority might provide.

²⁴ Once a young person ceases to be looked after, if they are a "relevant child", or a "former relevant child", the local authority must appoint a Personal Advisor (PA) to support them up to the age of 21, and up to 25 if requested. They act as the focal point to ensure that care leavers are provided with the right kind of personal support.

former responsible authority and/or their support network in decision-making. This is regardless of whether their contact with police occurs inside or outside that authority.

- All agencies should ensure that care leavers who come in to contact with the criminal justice system are aware of their rights to legal representation and/or advocacy support.
- Local authorities should achieve good standards of practice in supporting care leavers in custody and meeting their statutory duties.^{25, 26} Local authorities must regularly visit care leavers in custody, pathway planning must continue, and it is good practice to ensure that pathway plans are reviewed at least one month before release, to enable sufficient time for effective pre-release planning and to inform the young person of these plans.
- The YOT or the Probation Service, in seeking to ensure that young people who have served a custodial sentence do not re-offend, should look to help and support their development in to resilient and law-abiding adults.

²⁵ Local authorities duties towards care leavers are outlined in [Children Act 1989 Guidance and Regulations Vol 3: transition to adulthood for care-leavers](#)

²⁶ It should be noted that not all care leavers will want support from their LA; this is their choice.

8. Support to reduce offending for those who enter the criminal justice system

8.1. There will be instances where looked-after children and care leavers have to enter the criminal justice system. However, if a looked-after child is charged with an offence, it is important that they are not disadvantaged because of their looked-after status, and local authorities should ensure that there are viable alternatives to a child being remanded to a secure establishment. The home authority must ensure that the young person is:

- Legally represented by a solicitor with expertise in youth justice.
- Supported whilst at the police station by an appropriate adult.
- Not held at the police station for longer than is necessary because support and/or accommodation isn't available.
- Supported to understand what is happening to them.
- In addition to their carers, it is good practice for the child's social worker to attend court with them, particularly on the day of sentence, to ensure that the child's best interests are represented, that custody is used only as a last resort, and to act as a good parent would if their child was in court.
- If the child has an Independent Child Trafficking Advocate, they should be advised, and attend court to further support the child or young person.

8.2. All local agencies/protocol partners should sign up, and adhere, to the [Concordat on children in custody](#) and seek to avoid holding looked-after children overnight in police cells where possible.

8.3. If a looked-after child receives a community sentence, their carers, social worker and YOT case manager should continue to work closely together, share information and clarify their roles and responsibilities to ensure that the child receives the support they need.

8.4. If a custodial sentence is likely, the carers, YOT worker and the child's social worker should work together to prepare the child or young person, explaining what will happen and how they will be supported. The social worker should feed in any relevant information to the YOT ahead of them preparing the pre-sentence report.

Roles and responsibilities towards a looked-after child in custody

Local Authority

8.5. Local authorities have clear on-going responsibilities towards looked-after children in custody set out in Chapter 8 of the [Children Act 1989 guidance and regulations volume 2: care planning, placement and case review](#), which they must fulfil as part of the effective implementation of this protocol. The text below does not restate all the duties and is **NOT** an exhaustive list; however, in fulfilling these duties:

- If a child in care under a care order enters custody, their social worker must visit them within one week of them being sentenced and detained²⁷. Subsequent visits must take place at intervals of not more than six weeks for the first year and not more than three months after that. Additional visits should also take place if reasonably requested by the young person, custodial establishment, YOT or where there are particular circumstances that require a visit. Social workers should follow the principle of *'would this frequency of visits be good enough for my child?'*
- For children accommodated under Section 20 of the Children Act 1989, local authorities must ensure an authority representative visits them within 10 working days of their detention and thereafter whenever reasonably requested by relevant partners²⁸.
- Many young people will serve relatively short sentences, where visiting more frequently than every six weeks may be appropriate. Needing to prepare relevant plans and the child for release and resettlement should be considered in deciding when and how frequently to visit a child in custody.

Resettlement²⁹

- Looked-after children should not be disadvantaged regarding early release compared with other children in custody. Early release and use of release on

²⁷ Regulation 28(6) of the Care planning, placement and case review (England) Regulations 2010.

²⁸ This is set out in the [Visits to Formerly Looked-After Children in Detention \(England\) Regulations 2010](#). These regulations also set out the relevant parties able to request visits.

²⁹ Statutory requirements for local authorities on planning for release are set out in chapter 8 Children Act 1989 guidance and regulations volume 2: care planning, placement and case review. This best practice guidance should be read in conjunction with this.

temporary license can encourage good behaviour and engagement with resettlement plans and, as such, should be considered where possible.

- Resettlement planning should begin at the start of the remand period or sentence and be a continued focus of required planning meetings during the time in custody³⁰. Resettlement planning should include the young person's wishes and views, and arrangements tailored to their individual needs.
- Where a child in care is due to end a period in custody, the child's social worker and YOT case manager must work together to co-ordinate arrangements for the child's release and subsequent support in the community. These arrangements should be developed in collaboration with the young person and tailored to their individual needs. The care/pathway plan and Notice of Supervision or Licence should be confirmed with the child well before release³¹ and include key details, such as living arrangements, arrangements for education or employment, financial support, and any supervision or licence requirements following custody³².
- All looked-after children should be collected from the establishment at an agreed time on the date of their release and accompanied to their accommodation. Every effort should be made to have this undertaken by someone familiar to them and should not be by escort services. Customised support should be in place to help them successfully re-establish their lives in the community.

Secure establishments

- Custodial establishments should nominate a named representative to act as the link with the care planning process for each child in care during their time in custody.
- Custodial establishments should do all they can to prepare children and young people for transition back in to the community and support transition arrangements.

³⁰ Planning requirements will vary depending on a child's status prior to entering custody. Relevant requirements are set out in Chapter 8 of the [Children Act 1989 guidance and regulations volume 2: care planning, placement and case review](#).

³¹ Ideally, these arrangements should be confirmed well before the 10 days prior to release required by Children Act 1989 guidance and regulations volume 2: care planning, placement and case review statutory guidance.

³² Paragraphs 8.76 to 8.80 of the [Children Act 1989 guidance and regulations volume 2: care planning, placement and case review](#) set out the requirements regarding planning for release.

9. A restorative approach

9.1. Restorative justice gives victims the chance to meet or communicate with their offenders to explain the real impact of the crime – it empowers victims by giving them a voice. It also holds offenders to account for what they have done and helps them to take responsibility and make amends.

9.2. A restorative approach is essentially about working with people to help them understand their own needs and to empathise with and, therefore, understand the needs of others, allowing them to develop understanding of the impact of their actions. This can range from informal day-to-day restorative approaches related to building relationships through to more formal restorative justice conferences.

9.3. Restorative approaches seek to establish an environment where mutual regard is foremost, and to repair or resolve a harm that has been perpetrated. It is a process whereby the victim has an opportunity to be heard and to state the impact of the behaviour and the offender has the opportunity to take responsibility for their actions. Restorative approaches need to be informed by the following six principles:

- Restoration – the primary aim of restorative practice is to address and repair harm.
- Voluntarism – participation in restorative processes is voluntary and based on informed choice.
- Neutrality – restorative processes are fair and unbiased towards participants.
- Safety – processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused.
- Accessibility – restorative processes are non-discriminatory and available to all those affected by conflict and harm.
- Respect – restorative processes are respectful of the dignity of all participants and those affected by the harm caused.

9.4. To avoid causing additional harm, professionals should consider the impact of restorative processes on the child or young person, bearing in mind their individual characteristics such as religion, culture or individual vulnerabilities and experiences. The child or young person should be given an opportunity to have their voice heard, as set down in [The Voice of the Child](#) section. It should not be automatically assumed that a child or young person is solely to blame for an event and they should be afforded an opportunity to put their version of events across.

Further information on restorative justice is available at [Annex 2](#).

10. Implementation and governance of the protocol

10.1. To implement this national protocol effectively, key partners will need to co-develop and sign up to a protocol/arrangements appropriate to their needs. **It is vital that such arrangements are co-produced with ALL partners, including care providers, from the first to last stage.** This process should include:

- Identification and involvement of all agencies/ organisations necessary to ensure effective implementation of the protocol locally.
- Named senior leaders in all necessary partners agreeing to the protocol and committing to driving implementation of the protocol in their organisation.
- Agreeing a local accountability structure and appointing a body to monitor the implementation and effectiveness of the protocol at regular intervals. This can be an existing structure, such as the three local safeguarding partners. The accountability structure agreed should seek to involve care provider representatives and looked after children themselves.

10.2. Arrangements, based on the recommended framework set out in this protocol, will act as an agreement between agencies about expected behaviour and standards of practice. A model local arrangement is set out in [Annex 1](#). This sets out the minimum expectations of local arrangements. Agencies will then need to implement and embed changes necessary to fulfil the agreed arrangement. Therefore, governance will sit with local partnerships and we expect local areas to monitor impact on looked-after children and care leavers, including local data on offending behaviour.

10.3. Where a protocol is in place, Ofsted would look at this through the lens of promoting positive outcomes for looked-after children and care leavers, implementing the corporate parenting principles and reducing the unnecessary criminalisation of looked-after children elements of the Inspections of Local Authority Children's Services Framework.

10.4. To ensure that the number of local arrangements remains practical, we expect local authorities and all partners to work together at regional level to develop local arrangements. This will reduce the number of different arrangements carers and/or care settings have to take account of and help ensure local arrangements cover a sufficiently large area to be effective in promoting cross-boundary communication.

10.5. Where this protocol is implemented, please can you inform NationalProtocol.IMPLEMENTATION@education.gov.uk at the Department for Education. At a national level, the effectiveness of this protocol will primarily be measured by the number of areas informing the Department for Education that they are/have implemented local protocols on reducing criminalisation of looked-

after children and care leavers. The Government will continue to collate and publish data on the number of looked-after children subject to youth cautions, youth conditional cautions or convictions (as recorded in the looked after children statistical 1st release published by the Department for Education)³³.

³³ The Legal Aid, Sentencing and Punishment of Offenders Act 2012 abolished reprimands and final warnings and replaced them with a new system of youth cautions and youth conditional cautions which came into force on 8 April 2013. This new formal youth out-of-court disposal framework provides a proportionate and effective resolution to offending and supports the principal statutory aim of the youth justice system of preventing offending by children and young people.

Annex 1: Model local multi-agency protocol

Introduction

‘We have made significant strides in reducing the criminalisation of children and young people...This is a credit to the agencies and practitioners involved. However, although the vast majority of looked-after children and care leavers do not get involved with the justice system, they remain over-represented compared to others in the criminal justice system...This is a challenge we must meet.’

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

This (NAME OF JURISDICTION, e.g. Sussex) **local multi-agency protocol** that seeks to reduce the unnecessary criminalisation of (e.g. Sussex’s) looked-after children and care leavers.

Insert date and date of review

This protocol reflects the principles and ambition of the **National Protocol on Reducing Criminalisation of Looked-After Children and Care Leavers**. The national protocol describes ‘what’ needs to happen across the country. This local protocol complements this by setting out ‘how’ the national protocol will be implemented locally, and reflects the local structure of services, care populations, stakeholders, governance and decision-making arrangements.

‘A co-developed, whole system approach should be encouraged. This should include prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do offend.’

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

This protocol represents a **multi-agency partnership commitment** to reducing the unnecessary criminalisation of looked-after children and care leavers, and includes the contribution of relevant local agencies and staff. Although not an exclusive list, this includes: Local Authority Children’s Services; Youth Offending Services; Crown Prosecution Service; Police; HMCTS; the local Youth Panel (Magistrates); Care Services (including, kinship, fostering, and local authority and independent sector residential children’s homes); Care Leaver services; and any other private or voluntary organisations commissioned to support looked-after children locally.

‘All professionals, including social workers, teachers, police officers, foster parents, children’s home staff and YOT workers, have a duty to ensure that any special needs presented by looked-after children or those harmed (including communication and

interaction, cognition and learning and social, emotional and mental health difficulties³⁴) are identified, acknowledged and addressed in the management of the response to the behaviour.'

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

Key principles

Every effort should be made to avoid the unnecessary criminalisation of looked-after children, including through early intervention and prevention services. (See '[Overarching Key Principles](#)' section of the National protocol). This is in recognition that many looked-after children have experienced abuse and trauma, affecting their emotional and behavioural development, potentially making them particularly vulnerable to involvement in the criminal justice system, and that criminalisation can be a barrier to successful transition to adulthood and future life prospects.

Inappropriate response to behaviour which can be perceived as challenging can contribute to the breakdown of placements and can be linked to a drift into criminal and exploitative sub-cultures across the country. This impacts not only the likelihood of placements remaining stable and achieving successful outcomes, but the future of care leavers who are dramatically over-represented in the prison population.

The primary objective is for agencies to work together to prevent and reduce 1) offending and 2) the unnecessary criminalisation of looked-after children, accepting that children's welfare and safety are paramount.

'As a society, we have a responsibility to ensure we protect the children we care for from unnecessary criminalisation and to ask 'would this be good enough for my child?''

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

It is every professional's responsibility when working with children to strive to understand the underlying causes of a young person's behaviour. **Understanding the needs and perspective of the child or young person at the centre of an incident and listening to their voice should be central to all agencies practice and their response to incidents involving looked-after children and care leavers.**

Whilst this protocol aims to prevent and reduce offending and avoid criminalisation of looked-after children, victims have a right to be protected from all types of offending. Therefore, where looked-after children do offend, it is important that the rights and needs

³⁴ See [SEND-code-of-practice-0-to-25](#)

of victims are given due consideration in any decision making process relating to the offending of children.

‘Victims and communities have a right to be protected from offending and have their needs and interests taken into account in decisions on resolutions to offending.’

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

De-escalation and restorative approaches should underpin response to negative behaviour to help avoid the prosecution of looked-after children and care leavers (up to the age of 25) wherever possible. Restorative Justice (RJ) is a process whereby the victim has an opportunity to be heard and state the impact of the behaviour, and the offender has the opportunity to understand the consequences of and take responsibility for their actions. Such RJ approaches can take place informally within the care placement³⁵ in response to an incident (where police involvement is not required) or as part of a recognised police outcome where it is considered to be appropriate.

‘Restorative and diversionary approaches should underpin our response, whether the behaviour occurs in a child’s placement or the wider community.’

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

Children attracting a custodial sentence or remand are often the most vulnerable with multiple, over-lapping risks and needs. Youth Offending Teams (YOT) and Children’s Service Departments need to work together to ensure the young person knows exactly where they are going to live prior to release and be prepared accordingly with a robust resettlement plan. Accommodation and on-going support should be known and in place well in advance of their release date.

Prevention

Ensuring looked-after children have the right placements that meet their identified needs will significantly contribute to prevention.

It is important that agencies recognise the vital role of early intervention and prevention in reducing criminalisation of looked-after children and care leavers. Services should co-develop an approach that includes: prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do offend.

It is recognised that caring for and managing children and young people with behaviour which can be perceived as difficult or challenging can be an integral feature of work

³⁵ This applies to **all** placement types for looked-after children or care leavers.

within care placements. There should be a presumption that foster parents, residential staff and carers will generally manage negative behaviour ‘in-house’. They should have appropriate training and support to enable them to do so.

‘The police should not be used for low-level behaviour management or matters a reasonable parent would not have called the police over.’

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

It is necessary for all incidents within placements to be accurately recorded to provide informed histories of those in care. All incidents must be recorded in the child’s personal file. Foster parents, residential staff and carers should bear in mind the potential impact of that record on a child, and recording should be objective and non-stigmatising.

Responding to incidents

As part of co-developing and agreeing local arrangements, all parties should commit to de-escalation and in-house management, developing and agreeing a clear framework for responding to incidents similar to the one shown in [Annex 4: Deciding on how to respond to an incident](#) of the national protocol. The voice of the child should be central to this.

In circumstances where an offence/incident does not pose any immediate safety risk (and where victim/s indicate that they do not wish to make statements in support of potential charge/prosecution) then such incidents should be recorded and managed internally, without the need to involve the police.

It should be recognised that each individual case should be assessed with a regard to whether or not there is an immediate risk to personal safety, being mindful that arrest and subsequent contact with the criminal justice system brings its own risks for children.

If the decision to call the police is made, then, upon the arrival of the police at the scene, a joint view (police and carer) should inform whether arrest is necessary and proportionate. Where arrest is considered necessary there should be a presumption to interview children in voluntary reporting suites, outside of police custody, wherever possible.

Where a crime has been committed, this will be recorded by the police. The decision regarding the outcome for the young person should be made in consultation with (Insert here reference to your arrangements e.g. Triage or Central Youth Intervention Team (CYIT) and joint decision- making arrangements for informed consideration of out of court disposal options. Where children placed out of area are involved, these arrangements should include their responsible authority).

'In circumstances where informal, community resolution is inappropriate, police should, as a matter of routine, consider diversion³⁶ from criminalisation/prosecution through discussion in local joint decision-making forums³⁷. The forum should consider if using a more substantial restorative intervention, potentially involving other agencies, is suitable.'

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

In some circumstances where more serious offending has occurred the police will lead the investigation, and the preservation of evidence may be necessary in order to secure evidence as part of the investigation.

Where there is an immediate risk to personal safety

Police should be called to incidents where there is an unacceptable and unmanageable level of risk to personal safety and where it is deemed highly unlikely that order will be restored without police assistance. Immediate police response will be required for incidents of serious violence or serious dangerous disorder where children, residential staff, foster parents or carers are at risk of immediate serious physical harm. In such situations, carers/placement providers should contact the police via the 999 system.

Support to reduce offending for those who do enter the criminal justice system

Despite all agencies best efforts, there will be instances where looked-after children and care leavers have to enter the criminal justice system. As per the National Protocol, where this does happen, it should be underpinned by the following principles:

If a looked after child is charged with an offence:

- When a child in care is charged with an offence, it is important that they are not disadvantaged because of their looked-after status. Local authorities should therefore ensure there are viable alternatives to a child being remanded to a secure establishment.
- The home authority must ensure that the young person is:
 - Legally represented by a solicitor with expertise in youth justice.

³⁶ The specific approaches that have been developed as alternatives to prosecution for use after an offence has been detected.

³⁷ Joint Decision-making panels are multi-agency panels designed to consider and provide informed decision-making, based on various child records, on the most suitable case disposal. The panel has regard to the best interests of both children and victims of crime, with a view to protecting potentially vulnerable children and obligation to protect the public.

- Supported to understand what is happening to them.
- It is good practice for the child's social worker to attend court with them, particularly on the day of sentence, to ensure that the child's best interests are represented and that custody is used only as a last resort.
- If the child has an ICTA, they should be advised and be able to attend court to further support the child.
- All local agencies/protocol partners should sign up and adhere to the [Concordat on children in custody](#) and seek to avoid holding looked-after children overnight in police cells where possible.
- If a looked-after child receives a community sentence, their social worker and YOT case manager should continue to work closely together, share information and clarify their roles and responsibilities to ensure the child receives the support they need.
- If a custodial sentence is likely, the YOT worker and the child's social worker should work together to prepare the child, explaining what will happen and how they will be supported. The social worker should feed in any relevant information to the YOT ahead of them preparing the pre-sentence report.

Working together

All agencies (including children's social care, Youth Offending Services, the Crown Prosecution Service, Police, HMCTS, the local Youth Panel (Magistrates), all types of care settings³⁸, Care Leaver services, and any other private or voluntary organisations, commissioned to support looked-after children locally), working together is key to delivering shared objectives in reducing offending by looked-after children and care leavers and protecting the public.

To implement this national protocol effectively, key partners, including care providers, will need to co-develop and sign up to a protocols/arrangements appropriate to their needs. This process should include:

- Identification and involvement of all agencies/organisations necessary to ensure effective implementation of the protocol.
- Named senior leaders in all necessary partners agreeing to the protocol and committing to driving implementation of the protocol in their organisation.

³⁸ This includes, kinship, fostering and residential children's homes.

- Agreeing an accountability structure and appointing a body to monitor the implementation and effectiveness of the protocol at regular intervals. This can be an existing structure, such as the three local safeguarding partners.

Governance

Insert here reference to your local governance arrangements, e.g. The local Corporate Parenting Board or three safeguarding partners will provide governance to ensure implementation, monitoring, evaluation and compliance with local arrangements.

“Arrangements, based on the recommended framework set out in this protocol, will act as an agreement between agencies about expected behaviour and standards of practice. A model local arrangement is set out in [Annex 1](#). This sets out the minimum expectations of local arrangements. Agencies will then need to implement and embed changes necessary to fulfil the agreed arrangement. Therefore, governance will sit with local partnerships...”

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

Strategic Planning

Insert here reference to any Reducing Offending by Looked-After Children Strategic Plans and reference to any local arrangements/structures with responsibility for delivering against these plans (e.g. Any multi agency Steering Groups or Forums that are part of implementation of the strategy).

Monitoring and Evaluation

Reference here how you intend to monitor and evaluate progress, how you create arrangements to understand the needs (e.g. learning and development) of your care providers. How can issues and concerns arising be addressed and escalated if necessary?

Roles and responsibilities

Identify here the particular personnel with specific roles and responsibilities, such as senior staff in each agency responsible for implementing in their agency, ‘link workers’ (police or social care) to residential homes, necessary frontline practitioners.

The needs of carers

Reference how, you manage the needs of foster parents, residential staff and carers who experience loss and/or harm as a result of incidents. This includes identifying who has the duty of care to offer support, particularly when frightening or abusive incidents have significantly impacted upon their wellbeing. The absence of such support not only risks failure in ‘duty of care’ but may leave affected foster parents, residential staff/carers with unmet needs. Such circumstances are potentially unhealthy for all involved and may

leave affected carers feeling that their needs can only be met through pursuit of formal justice. We know that this is never in the best interests of children but we must meet our obligations to address the needs of those who care for them. Support for staff could take the form of access to an assistance programme, access to mediation service or providing access to relevant learning and development training opportunities.

Looked-after children who go missing

This is an opportunity for the protocol to reference agreed local procedures on responding to looked-after children who go missing (this is often the local Safeguarding Children's Board procedure – "Procedure for children and young people missing or absent from home and care").

It is the responsibility of the corporate parent to put strategies in place to reduce the opportunity for looked-after children to 'go missing', to take immediate action to find them, collect them and bring them home 'in-house' as most parents do. Should they be unable to find them and police are contacted, as the corporate parents, they should collect them ASAP from where ever they have been found, which minimises police contact. However, it is important to acknowledge there may be instances where the environment where the child or young person is found is unsafe for the person sent to collect them. In such circumstances, if foster parents, residential staff/carers having assessed the environment, feel unsafe then the police should assist them in collecting the child.

Information sharing

It is vital agencies develop an environment of information sharing that demonstrates to young people that agencies work together and keep each other informed of developments in order to serve children's best interests. The Data Protection Act (2018) allows that any practitioner can share relevant personal information about a child lawfully if it is to keep a child safe from harm, or to protect their physical, mental and emotional wellbeing. All practitioners should aim to gain consent to share information but should be mindful of situations where to do so would place a child at increased risk of harm. Information may be shared without consent if a practitioner has reason to believe that there is good reason to do so, and that sharing the information will enhance the safeguarding of a child in a timely manner.

In addition to the statutory guidance applying to agencies working with children, the key legal concepts, legislation and terminology relevant to information sharing are contained in:

- The Data Protection Act 2018
- The Human Rights Act 1998
- The common law duty of confidence

The information that could be shared between agencies for contextual safeguarding may include the following:

- Children and young people (both UK and foreign nationals) at risk of being sexually exploited (including regular updating of any CSE assessments), coerced in to criminal activity, or trafficked.
- Children and young people believed to be criminally active.
- Children and young people identified as criminally active being monitored including recording their clothing, times in and out of the homes and any property appearing without formal recognition or identification.
- Areas identified as used by drug dealers in the locality of their placement.
- Sex offenders living in or near placements if relevant (including notification by police as part of information regularly provided to inform children's home Location Review Risk Assessments).
- Grooming activity in the location.
- Gang activity in the location.
- Add, subtract or sequence as appropriate to your locality.

Crown Prosecution Service (CPS) response

This policy is implemented in conjunction with the CPS guidance on decisions to prosecute looked-after children. This should be read in conjunction with *Offending Behaviour in Children's Homes* – [Crown Prosecution Service Guidance Youth Offenders](#), the basic principles of which can be applied to all placements.

Signatures

Annex 2: Restorative Approaches

The following is based on guidance from the Restorative Justice Council. Restorative approaches, in their simplest terms, seek to repair what has been broken, or resolve a harm that has been perpetrated. This way of working needs a context provided by the development of restorative principles and approaches. These approaches are essentially about building and maintaining positive relationships in a way that becomes the default behaviour and language of all adults and children in the child's placement. This way of working needs to be embedded into the culture and ethos of those agencies or organisations using them.

Restorative approaches are essentially about working with people to help them understand their own needs and to empathise and, therefore, understand others' needs – allowing the development of an understanding of the impact of their actions. This understanding of who has been affected, and how they have been affected, is at the heart of restorative working.

Restorative approaches can become the explicit set of principles and practices that inform every communication, regardless of the placement children may be in. It creates a context where children engage actively in learning about their social behaviours, rather than acting as passive recipients of rules and sanctions. Behaviour needs to sit inside a relational context where information is not simply transmitted from one person to another, as if filling an empty vessel.

Restorative approaches aspire to create environments founded on relationships, respect, inclusivity, fairness and tolerance. They also seek to create, through the principles and approaches used, the conditions to promote the development of self-managing behaviours, positive attitudes and, of course, achievement.

Adults should engage children through talk and through using restorative approaches. Children need to be aware how their behaviour affects themselves and others and develop an understanding of social responsibility. They should also be given the responsibility to make things right. Where a child in care changes their behaviour in this context it is because they are buying into the relationship climate.

The restorative process accepts there are rules in every placement type a child may experience but argues that where children are passive recipients of rule-based cultures, social learning and development can be limited to social conditioning. When children are active in managing their own behaviour social learning occurs.

Restorative approaches

Restorative approaches are a process whereby the victim has an opportunity to be heard and to state the impact of the behaviour and the offender has the opportunity to take responsibility for his or her actions. Approaches can range from informal addressing of issues, internal mediation within the placement between young people and foster parent

or residential care staff without involving the police, informal resolution such as community resolution that does involve the police, to more intensive restorative work facilitated by specialist restorative practitioners.

Dependent on the process used with the child(ren), from informal to more formal, the member of staff or foster parent conducting the 'meeting' will need to have been given appropriate training. In some settings that may have a settled group of children and young people, it may be useful to use peer mentors drawn from the children. Again, training for the young people is essential.

The context of each setting needs to be considered. The age of children, their ethnicity, whether they are unaccompanied migrant children, their gender, religion and other protected characteristics are all factors which must be taken in to account as they affect the way a 'meeting' would be conducted. This nuanced approach would develop within teams, allowing the most appropriate person to lead when an issue arises.

You need to have skilled facilitators for informal and formal processes³⁹, which will also need to reflect the fact that it is not always obvious who is (or perceives themselves to be) the victim and offender in a dispute or issue. In these cases, the skill of the facilitator/mediator will be paramount. It is essential the facilitator has knowledge of the child or young person and their history to allow maximum chance of success.

Recording use of restorative approaches needs to be established within each setting, including foster placements. The local recording processes for the setting can continue to be used but should also include a way to record restorative interactions across the range of those interactions. Recording will need to be appropriate and adapted to the type of placement. It should not seek to add additional, unnecessary process or burdens. This will allow information on the looked-after child to be available to future foster parents, residential staff or other adults working with the child to inform their practice.

A common language and set of behaviours across local authority services, partner agencies and within third sector organisations that work with local authorities, is vital for this work to be successful. This acts a thread between agencies and provide consistency to the interactions a child receives from them, as well as helping to mitigate against the barriers systems often throw up between agencies.

The six principles of restorative approaches are⁴⁰:

1. Restoration – the primary aim of restorative practice is to address and repair harm. Practitioners should aim to ensure that restorative interventions they carry out are aimed at repairing harm that has been caused. An opportunity for

³⁹ If the child doesn't speak English, part of this will include ensuring a suitable interpreter is present where necessary.

⁴⁰ "[Principles of restorative Practice](#)" guidance.

addressing issues participants wish to raise in relation to the harm should be given.

2. Voluntarism – participation in restorative processes is voluntary and based on informed choice. It is imperative that participants come to a restorative intervention of their own free will, having understood the reasons for and methodology of the process. It is the duty of the practitioner to ensure that everyone taking part understands why they are there and their responsibilities in relation to the process.
3. Neutrality – restorative processes are fair and unbiased towards participants. Practitioners are human beings and in many cases may not be neutral to the harm that has been caused. However, it is important that such biases are not permitted to affect the neutrality of the restorative process, which should not be conducted in such a way that it disadvantages or discriminates against any one participant or party.
4. Safety – processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused. Practitioners should aim to ensure that processes are safe by undertaking full and proper preparation in relation to each intervention they provide. Risk assessments are paramount whether conducted ‘on the spot’ (as may be required in the case of ‘street’ or ‘corridor’ restorative interventions) or via the use of detailed risk assessment spreadsheets. Practitioners should be appropriately trained.
5. Accessibility – restorative processes are non-discriminatory and available to all those affected by conflict and harm. Practitioners must be mindful of any inherent biases that could affect their ability to offer a neutral restorative process to any person on the basis of their particular status or background (e.g. their race, nationality or country of origin, gender, offending history, disability, socio-economic or political background).
6. Respect – restorative processes are respectful of the dignity of all participants and those affected by the harm caused. Restorative processes must be conducted in a manner that is respectful to those taking part. If the process, or anyone involved in it, is disrespectful to those taking part, the chances of a successful or positive outcome are significantly reduced. One of the many skills required of a practitioner is the ability to conduct an often highly emotional process in a neutral and measured fashion, and respect is key to delivering restorative interventions in this way.

Annex 3: Dynamic risk assessment⁴¹

A dynamic risk assessment is a tool for rapid, short-term use during an incident. Given the anxious situation, it needs to be simple to run through. It will usually include considering the following:

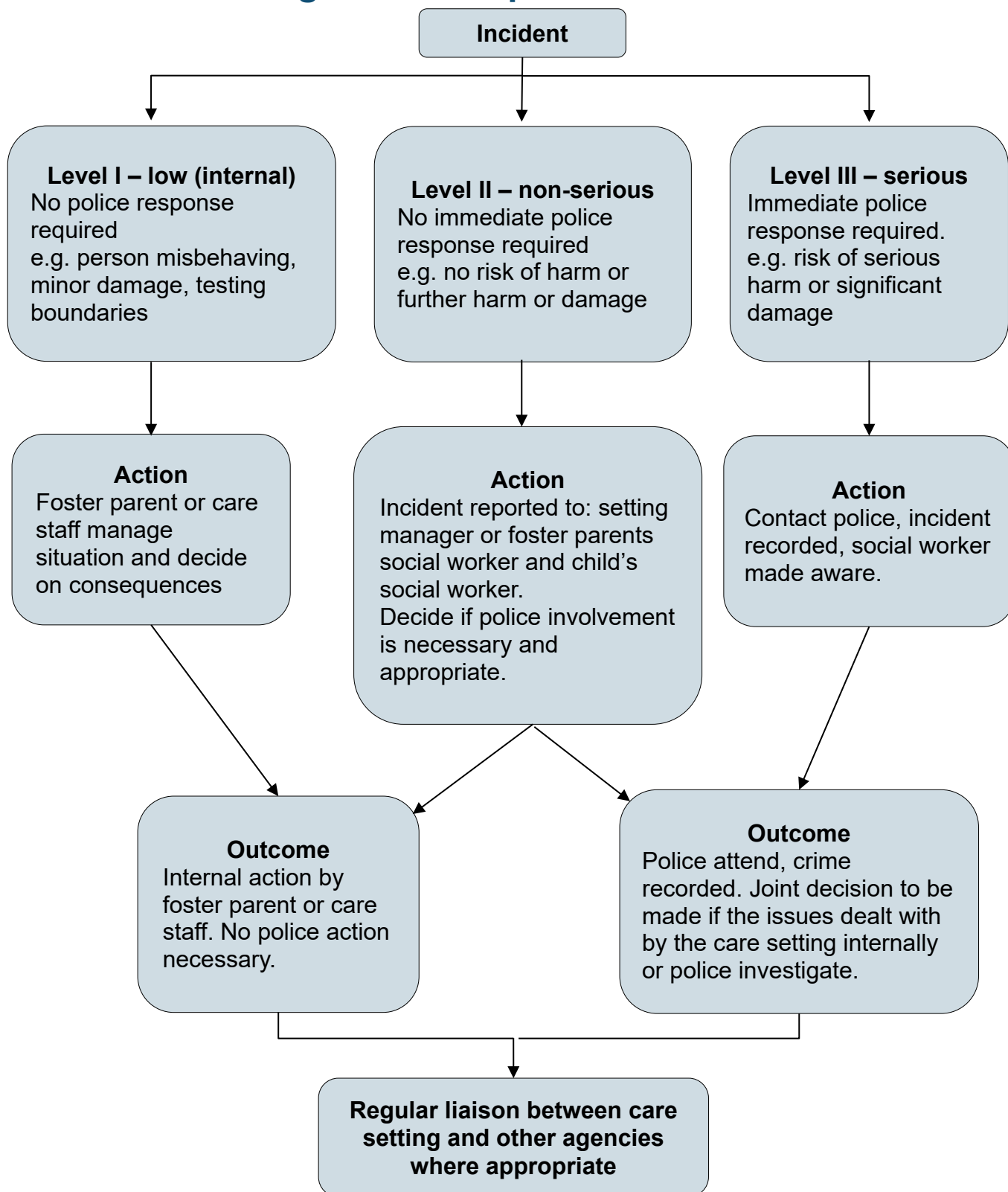
- Who is at risk of harm and what is the nature of the risk?
- Does the situation relate to any known risks in the person's history?
- Have they been relating well to others recently?
- How unusual is this behaviour for this young person compared to recently?
- Have there been previous similar incidents?
- Are the factors in this instance known or unknown? Is there likely to be any provocation (e.g. bullying or peer pressure)? Or, is the young person feeling pressures externally (e.g. being exploited or coerced)?
- Understanding the emerging incident from the perspective of the child's or young person's experience and thinking: '*Is this a new trigger or stressor* (e.g. something surrounding family or friends or time of year)?' Or, '*is it a known threshold and the plan advises what works in this instance?*'
- How likely is the harm to others or the environment, and how serious will it be?
- Has anyone been hurt?
- What are the person's own feelings and wishes regarding the possible risk?
- Would intervening at this moment with this young person really be about safety, or is it about my own feelings of powerlessness and frustration?
- Will the consequences of intervening be less or more harmful than the behaviour itself?
- Is it likely the current episode will be short lived or not? If short, once the episode abates, what can you or another do now to support and sustain their self-control?
- What will be the effect on the rest of the group?
- What would be the consequence be of not intervening?
- Can an alternative course of action be found that has more acceptable degrees of risk?
- Are there enough staff with the right skills to intervene safely and effectively?
- What is the least restrictive and most respectful way of intervening to prevent harm?
- Have we tried all reasonable alternatives?
- Is intervention in their and others' best interests?
- Is intervention the least restrictive option?
- Is the intervention required to be carried out now?
- What is the plan if the intervention cannot be appropriate or timely?

⁴¹ This annex was developed with the assistance of the National Centre for Excellence in Residential Child Care

- Would I have called the police if this were my own child?

The outcome of this rapid assessment should be in line with the child's care plan unless there are clear reasons based on the risk of harm that justify overriding it. All decisions should be informed by a rigorous assessment of that individual child's needs, be properly recorded, reported and be kept under regular review.

Annex 4: Deciding how to respond to an incident⁴²



⁴² Adapted, with permission, from the Pan Dorset Protocol To Reduce Criminalisation of Children and Young People in Care

Annex 5: Liaison and diversion services

Liaison and Diversion (L&D) services identify children, young people and adults who have mental health, learning disability, substance misuse or other vulnerabilities when they first come into contact with the criminal justice system as suspects, defendants or offenders.

The service can then support people through the early stages of criminal system pathway, refer them for appropriate health or social care, or enable them to be diverted away from the criminal justice system into a more appropriate setting, if required.

L&D services aim to improve overall health outcomes for people and to support people in the reduction of re-offending. It also aims to identify vulnerabilities in people earlier on, which reduces the likelihood that people will reach a crisis-point and helps to ensure the right support can be put in place from the start.

The main things that L&D services do for the people they see are identification, screening, assessment and referral to other services. These are explained below:

Identification: Criminal justice agencies working at the Police and Courts stages of the pathway are trained to recognise possible signs of vulnerability in people when they first meet them. They then alert their local L&D service about the person.

Screening: Once someone is identified as having a potential vulnerability, the L&D practitioner can go through screening questions to identify the need, level of risk and urgency presented. It also helps determine whether further assessment is required.

Assessment: Using approved screening and assessment tools, an L&D practitioner will undertake a more detailed assessment of the person's vulnerability. This provides more information on a person's needs and whether they should be referred on for treatment or further support.

Referral: The L&D practitioner may refer someone to appropriate mainstream health and social care services or other relevant interventions and support services that can help. A person is supported to attend their first appointment with any new services and the outcomes of referrals are recorded. L&D services will also provide a route to treatment for people whose offending behaviour is linked to their illness or vulnerability.

The police, youth offending teams, probation and the judiciary make decisions based on the evidence and information presented to them. L&D services record all information about a person's health needs and share these with relevant agencies so they can make informed decisions about case management, sentencing and disposal options.

Annex 6: Resources

Statutory guidance and regulations:

- [Children Act 1989 guidance and regulations volume 2: care planning, placement and case review](#) - Chapter 8 covers local authorities children's services responsibilities towards looked after children in contact with the youth justice system.
- [The Department for Education Quality standards for children's homes](#), particularly the positive relationship standard, the protection of children standard and engaging with the wider system.
- [The Children's Homes \(England\) Regulations 2015](#)
- [Working together to safeguard children](#) - Statutory guidance on inter-agency working to safeguard and promote the welfare of children.
- [Modern Slavery Act 2015](#)
- [Care of unaccompanied and trafficked children statutory guidance for local authorities](#) This sets out the steps local authorities and staff running local multi-agency safeguarding arrangements should take to plan for the provision of support for looked-after children who are unaccompanied migrant children, and who may be victims, or potential victims, of modern slavery.
- [Safeguarding children who may have been trafficked practice guidance](#) This guidance is for local authorities, to help agencies and their staff safeguard and promote the welfare of children who may have been trafficked.
- [Applying corporate parenting principles to looked after children and care leavers](#)
- [Crown Prosecution Service guidance on youth offenders](#), particularly the section relating to 'offending behaviour in children's homes'

Other supporting guidance:

- [The South East protocol on reducing criminalisation of looked after children](#)
- '[Principles of restorative Practice](#)' guidance (Restorative Justice Council 2015)
- The [Ofsted single inspection framework for children's services](#), in particular the key judgement: '*The experiences and progress of children looked after and achieving permanence*'. This says that local authorities are likely to be judged as good if: '*Any risks associated with children and young people offending, misusing drugs or alcohol, going missing or being sexually exploited are known by the local authority and by the adults who care for them. There are plans and help in place*

that are reducing the risks of harm or actual harm and these are kept under regular review by senior managers.'

Research or reviews:

- the HMIP thematic report, '[Looked after children: An inspection of the work of youth offending teams with children and young people who are looked after and placed away from home](#)' which recommends youth offending team managers should ensure: *'accurate information about children and young people who are looked after and placed outside their home area is sent promptly to the youth offending team in the new area assessments; intervention plans and reviews on children and young people take full account of the impact of being looked after; the enforcement processes for court orders and post-custodial licences are sensitive to, and take account of, the circumstances of children and young people who are looked after; and action is taken, where appropriate, to increase the number of children and young people who are dealt with through restorative justice measures when they offend within the residential setting'*.
- [The Lammy Review of Black, Asian and minority ethnic representation in the criminal justice system \(sept 2017\)](#)
- [Taylor review-of-the-youth-justice-system \(Dec 2016\)](#)
- [Sir Martin Narey's independent review of children's residential care in England \(2016\)](#)
- [In care and out of trouble - An independent review chaired by Lord Laming \(2016\)](#)
- [Youth Restorative Justice Intervention Independent Evaluation Final Report \(GDT Social Impact Analytics, 2014\)](#) Independent evaluation of Surrey County Council's Youth Restorative Intervention.

Other resources:

- [MindEd.org](#) - a free educational resource on children and young people's mental health for all adults from NHS England.



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